IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 491/2005

Shri Poro Kusta Nevekar,
major in age, agriculturist,
r/o. H.No.232, Asali, Shrithal,
Canacona. ..... Petitioner.

V/s.

1. Shri Calu Bhisso Velip,

2. Shri Chandru Bhisso Velip,

3. Shri Kusta Bhisso Velip,

4. Shri Khushali Bhisso Velipo,

All major in age, agriculturist,
r/o. H.No.351, Vaiza Wada,
Sristhal, Canacona, Goa.

5. Shri Mallikarjun Devalaya
registered under Devasthan Act,
having office at Chaudi, Canacona,
represented by its attorney
Shri Anil Dessai, r/o. Nagarsem,
Canacona, Goa.

6 Smt. Laxmi Calu Velip,

7. Smt. Chandravati Candru Velip

8. Smt. Rukmini Kusta Velip,

9. Smt. Vaishali Kushali Velip

All r/o. H.No. 215, Vaizawada
Shristhal, Canacona, Goa. ..... Respondents.

Mr. R.G. Ramani, Advocate for the petitioner.

Mr. P. A. Kamat, Advocate for the respondents.

CORAM : A.P. LAVANDE, J.

DATE : 20TH APRIL, 2006.

ORAL JUDGMENT :

Heard. Rule. Mr. Kamat waives notice on behalf of the respondents. By consent heard forthwith.

2. The petitioner assails the Order dated 26.10.2005 by which the application for amendment filed by the present petitioner who is the plaintiff in Regular Civil Suit No. 34/2002 pending before the Civil Judge, Jr. Division, at Canacona has been dismissed. The application has been dismissed primarily on the ground that since the trial has already started, in terms of proviso to Order VI, Rule 17 of C.P.C. the plaintiff was not entitled to the amendment sought for. The second ground on which the amendment has been refused is that the petitioner had filed an application for amendment six months prior to the filing of the present application for amendment.

3. Mr. Ramani, learned Counsel for the petitioner submits that the trial has not yet started. This position is not disputed by Mr. Kamat, learned Counsel for the respondents. That being the position, the first ground on which the amendment application has been dismissed is not sustainable in law. More over, the second ground on

which the application has been rejected by the trial Court is also not sustainable in law. A party is not disentitled to file second application for amendment in a suit.

4. Having regard to the facts and circumstances of the case, I am of the opinion, that the trial Court has not exercised the jurisdiction in accordance with law. The trial Court ought to have allowed the application for amendment filed by the plaintiff, subject to payment of costs.

5. In the result, therefore, the petition is allowed and the impugned Order dated 26/10/2005 is quashed and set aside. Consequently, the application for amendment dated 29.7.2005 is allowed subject to payment of costs of Rs.2,000/-. The petitioner to carry out the amendment within a period of four weeks from today. The costs shall be deposited by the petitioner in the trial Court, within a period of six weeks from today. Upon deposit being made, the respondents/defendants are at liberty to withdraw the same. Rule is made absolute in the aforesaid terms.

A.P. LAVANDE, J.

ssm.